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APPLICATION OF

THE WATERWORKS COMPANY OF FRANKLIN COUNTY

CASE NO. PUE980811

To revise tariff

REPORT OF HOWARD P. ANDERSON JR., HEARING EXAMINER

February 25, 1999

On November 16, 1998, The Water Works Company of Franklin County (the "Company" or "Applicant") notified the Commission's Division of Energy Regulation of its intent to increase its rates and charges effective for service rendered on and after January 1, 1999.

The Company is located in Franklin County, Virginia. As of October 31, 1998, the Company served fifty-three unmetered water connections and maintained twenty-two availability customers in the Mallard Point, Starwood, Overlook, and Lakemount subdivisions.

On December 7, 1998, the Commission issued an Order Suspending Revisions and Scheduling Hearing thereby establishing a procedural schedule and directing that a public hearing be held on February 3, 1999. The Commission further declared the proposed water service rates interim and subject to refund with interest, and that the proposed availability rate and hookup and connection charge be suspended for sixty days, or through March 1, 1999, and thereafter be deemed interim and subject to refund with interest.

A public hearing was convened as scheduled on February 3, 1999. Four public witnesses appeared at the hearing. Wayne N. Smith, Esquire, appeared as counsel for Commission Staff. There was no appearance by or on behalf of the Applicant. A transcript of the proceedings is filed with this Report.

At the hearing, Mr. Smith, counsel for the Commission, noted that the Applicant failed to provide public notice as ordered by the Commission in its December 7, 1998, Order Suspending Revisions and Scheduling Hearing. Specifically, the Applicant was ordered to place documents pertaining to this proceeding in the Franklin County Public Library. (Order at 4). Mr. Smith further stated that the Applicant indicated in a letter to Staff witness Carr that notices of this proceeding were sent to the customers on December 16, 1998. (Tr. 33). However, David Talbott, a customer who spoke as a public witness, stated that he did not receive notice of this proceeding from the Applicant, but did receive notice from the Commission. (Tr. 36). Mr. Smith explained that he mailed a letter containing information pertaining to this proceeding to approximately 40 of the Company's customers. (Tr. 36, 37). Mr. Smith then moved for dismissal of this case based on the Company's noncompliance with Commission orders. (Tr. 34). This motion was taken under advisement (Tr. 40) and evidence was taken from Staff witnesses Carr and Stevens.

I find Staff's motion to dismiss should be granted. Although it appears that Company complied with the initial notice requirements set forth in § 56-265.13:5 of the Code of Virginia,

there is no proof of this fact. Further, there is no evidence the Company complied with the notice provisions of the Commission's Order of December 7, 1998.¹ Rule 8:2(a)(iii) of the Commission's Rules of Practice and Procedure requires that a copy of the notice and method of service be introduced into the record at the commencement of the hearing. Finally, the Applicant has the burden of proving that the rate increase is justified.² No one appeared on the Applicant's behalf, therefore this burden was not met.³ Accordingly, **I RECOMMEND** that:

1. The application of The Water Works Company of Franklin be dismissed; and
2. That interim rates charged hereunder be refunded with interest.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

Howard P. Anderson, Jr.
Hearing Examiner

¹Company was ordered in paragraph (11) of the Commission's Order to promptly make available for public inspection at the Franklin County Public Library copies of its proposed tariff and all materials to be filed with the Clerk of the Commission. Paragraph (14) ordered the Company to serve a copy of the Commission's December 7, 1998, Order on all customers. Mr. Winney was further directed in paragraph (15) of the Commission's Order to file with the Clerk of the Commission a certificate stating the date of mailing and the name and mailing address of all customers served.

²In adopting rules to implement the Small Water or Sewer Public Utility Act, the Commission stated "the company ultimately bears the burden of identifying expenses, quantifying them, and demonstrating that they are appropriately part of the normal, ongoing costs of operating a water or sewer utility." *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules to implement the Small Water or Sewer Public Utility Act*, Case No. PUE870037, Final Order at 11 (November 10, 1987).

³Mr. Winney advised Staff that he "would not make the February 3, 1999 meeting." (Tr. 31). There was no request for continuance or indication that he would attend in the future if this hearing were postponed.